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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 WILLIE NATHANIEL BROWN,

7 Plaintiff,

8 v.

9 PIERCE COUNTY JAIL,

10 Defendant.

Case No. 3:19-cv-05228 BHS-TLF

ORDER TO SHOW CAUSE OR
AMEND THE COMPLAINT

11 Plaintiff Willie Nathaniel Brown has filed a civil rights complaint against Pierce County
12 Jail. Dkt. 4. The Court has granted his motion for leave to proceed *in forma pauperis* (IFP). Dkt.
13 3.

14 As discussed below, however, the complaint has deficiencies that prevent the Court from
15 directing service at this time. Plaintiff will be provided the opportunity by **May 3, 2019**, to show
16 cause why the complaint should not be dismissed or to file an amended complaint.

17 **DISCUSSION**

18 The Court will dismiss a complaint at any time if the action fails to state a claim, raises
19 frivolous or malicious claims, or seeks monetary relief from a defendant who is immune from
20 such relief. *See* 28 U.S.C. § 1915(e)(2)(B). To state a claim for relief under 42 U.S.C. § 1983, a
21 plaintiff must show that: (1) the plaintiff suffered a violation of rights protected by the
22 Constitution or created by federal statute, and (2) the violation was proximately caused by a
23 person acting under color of state law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir.

1 1991). The first step in a § 1983 claim is therefore to identify the specific constitutional right
2 allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994). To satisfy the second prong, a
3 plaintiff must allege facts showing how individually named defendants caused, or personally
4 participated in causing, the harm alleged in the complaint. *See Arnold v. IBM*, 637 F.2d 1350,
5 1355 (9th Cir. 1981).

6 Here, plaintiff's amended complaint alleges that he has been placed on phone, mail, and
7 visit restriction since February 23, 2018, when he was first detained at Pierce County Jail. Dkt. 4,
8 p. 3. He alleges that these restrictions have prevented him from speaking with his family
9 members or members of his community. *Id.* He alleges that his only means of communication is
10 through his lawyer, "who doesn't alway[s] answer." *Id.* Plaintiff names only Pierce County Jail
11 as a defendant.

12 The complaint suffers from deficiencies that, if not corrected in an amended complaint,
13 require dismissal of the entire action. 28 U.S.C. §§ 1915(e)(2)(b)(ii), 1915A(b)(1).

14 Pierce County Jail is not a legal entity capable of being sued in a 42 U.S.C. § 1983 action.
15 Section 1983 applies to the actions of "persons" acting under color of state law. Municipalities
16 are subject to suit under § 1983. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658,
17 690 (1978); *Owen v. City of Independence, Mo.*, 445 U.S. 622, 637 (1980) (holding § 1983 is
18 expansive and does not expressly incorporate common law immunities). But "to bring an
19 appropriate action challenging the actions, policies or customs of a local governmental unit, a
20 plaintiff must name the county or city itself as a party to the action, and not the particular
21 municipal department or facility where the alleged violation occurred." *Bradford v. City of*
22 *Seattle*, 557 F. Supp. 2d 1189, 1207 (W.D. Wash. 2008) (holding Seattle Police Department is
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1 not a legal entity capable of being sued under § 1983) (citing *Nolan v. Snohomish County*, 59
2 Wn. App. 876, 883 (1990)).

3 If plaintiff seeks to hold a local governmental unit like Pierce County liable under section
4 1983, he must show that the entity itself violated his rights or that it directed its employee to do
5 so. *Bd. of County Comm'rs of Bryan County v. Brown*, 520 U.S. 397, 404 (1994). Under this
6 theory of liability, the focus is on the entity's "policy statement, ordinance, regulation, or
7 decision officially adopted and promulgated by that body's Officers." *City of St. Louis v.*
8 *Praprotnik*, 485 U.S. 112, 121 (1988) (quoting *Monell v. Dept. of Soc. Servs.*, 436 U.S. 658, 690
9 (1978)). A local governmental unit may not be held responsible for the acts of its employees
10 under a *respondeat superior* theory of liability. *See Monell*, 436 U.S. at 694. To sue Pierce
11 County, Mr. Brown must allege facts showing that any constitutional deprivation he suffered was
12 the result of a custom or policy of the County. *See id.* Plaintiff has not done so.

13 If plaintiff chooses to amend his complaint, he must write a short, plain statement telling
14 the Court: (1) each of the names of the individual person(s) and/or entities who allegedly
15 violated the right (the defendant or defendants); (2) factual allegations stating exactly what that
16 individual person or entity did or failed to do under color of state law; (4) how the action or
17 inaction of that individual person or entity is connected to a violation of plaintiff's federal
18 constitutional or federal statutory rights; and (5) what specific injury plaintiff suffered because of
19 each defendant's conduct or lack of action.

20 If plaintiff alleges that certain individuals violated his constitutional rights, he must name
21 those individuals as defendants and must allege in more specific terms how their action or
22 inaction violated a specific constitutional right. And if plaintiff alleges that a local governmental
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1 unit violated his constitutional rights, he must allege facts showing that any constitutional
2 deprivation he suffered was the result of a custom or policy of that entity.

3 Plaintiff may show cause why his complaint should not be dismissed or may file an
4 amended complaint to cure, if possible, the deficiencies noted herein, **on or before May 3, 2019**.

5 The amended complaint must be legibly rewritten or retyped in its entirety and contain the same
6 case number. Any cause of action alleged in the original complaint that is not alleged in the
7 amended complaint is waived. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997),
8 *overruled in part on other grounds, Lacey v. Maricopa Cnty.*, 693 F.3d 896 (9th Cir. 2012).

9 The Court will screen the amended complaint to determine whether it states a claim for
10 relief under 42 U.S.C. § 1983. If the amended complaint is not timely filed or fails to adequately
11 address the issues in this order, the undersigned will recommend dismissal of this action under
12 28 U.S.C. § 1915(e)(2).

13 The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C. § 1983
14 civil rights complaint and for service, a copy of this Order and the *Pro Se* Information Sheet.

15 Dated this 3rd day of April, 2019.

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Theresa L. Fricke
19 United States Magistrate Judge
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